UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

AMERICAN SALES AND MANAGEMENT ORGANIZATION, LLC d/b/a EULEN AMERICA

and

Cases 12-CA-163435
12-CA-176653

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ

COUNSEL FOR THE GENERAL COUNSEL'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE

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I. Statement of the Case

On April 28, 2016, American Sales Management Organization, Inc. d/b/a Eulen America (Respondent), discharged employee Joanne Alexandre (Alexandre), less than a month after she and dozens of coworkers engaged in a protected, concerted strike at the Fort Lauderdale-Hollywood International Airport (FLL) sponsored by SEIU Local 32BJ (the Union). What distinguished Alexandre from her striking coworkers who were not discharged was that Respondent had the perfect opportunity to rid itself of a Union supporter while making the discharge look like Alexandre's fault: her security badge, necessary to access the secure parts of FLL to perform her job duties of overnight airplane cleaning, was up for renewal. Although Respondent received notice from the Brevard County Aviation Department (BCAD) that Alexandre was approved to come pick up a renewed credential on April 11, 2016, Respondent failed to notify Alexandre of this fact or deliver to her the necessary approval email to receive the credential until either April 27 or April 28, 2016. Respondent then blamed Alexandre for having her security credential revoked, informed her that she could not reapply for her job, and wished her "good luck." Respondent's discharge of Alexandre, shrouded in pretext, is in fact the direct result of her participation in the Union's strike, and therefore violates Section 8(a)(3) and (1) of the National Labor Relations Act ("the Act" or "the NLRA").[1]

This case also presents the additional issue of whether the National Labor Relations Board ("the Board" or "the NLRB") may exert jurisdiction over Respondent. As a contractor performing a variety of ground services to various airlines, including airplane cleaning, baggage handling, and security checkpoint assistance, Respondent asserts that it is a derivative carrier

[1] The Complaint also alleged that Respondent violated the Act by making unlawful statements at its Miami, Florida airport operation. That paragraph of the complaint, as well as all derivative allegations, were withdrawn by the General Counsel by oral motion at the hearing.

under the precedent established by the National Mediation Board (NMB), subject instead to the jurisdiction of the Railway Labor Act (RLA). This argument is unavailing, as the credible evidence admitted at the hearing shows. Respondent does not satisfy the NMB's test for being classified as a derivative carrier, and, accordingly, Board jurisdiction is entirely appropriate in this matter.

After discussing the facts in greater detail, this brief will show that Yasmin Kendrick, Respondent's main witness and the primary decision-maker with regard to Alexandre's discharge, was not a credible witness, and that all possible inferences should be drawn in favor of Alexandre and the General Counsel's case. Following the credibility discussion, this brief will analyze the threshold issue of the Board's appropriate exercise of jurisdiction over Respondent, explaining in detail why Respondent is not exempt as a derivative carrier of either Spirit Airlines, or of the airlines it services at FLL collectively. The credible record evidence in this case proves that Respondent is an employer within the meaning of the Act, and that it unlawfully discharged Alexandre because she participated in the Union-sponsored strike on March 30, 2016.

II. Statement of Facts

A. Employer's Operation at Fort Lauderdale-Hollywood International Airport

i. Overview

Respondent, a provider of aviation support services, is headquartered in Miami, Florida and operates in seven states, including at FLL in Fort Lauderdale, Florida. [JS 4; GCX 1(t), para. 2, and 1(v), para. 2; JX 20].[2] No airline carriers have an ownership stake in Respondent, which is a subsidiary of the global corporation Grupo Eulen, headquartered in Spain. [JS 3]. At FLL,

[2] General Counsel's Exhibits are referenced as GCX (number); Respondent's Exhibits are referenced as RX (number); Charging Parties Exhibits are referenced as CPX (number); the Administrative Law Judge's Exhibit is referenced as ALJX (number); references to the Joint Exhibits are noted as JX (number); and references to the Joint Stipulations, in evidence as JX 1, are noted as JS (paragraph). The hearing transcript is referenced as Tr. (page number).

Respondent contracts to provide varying types of support services to American Airlines (American), Bahamasair Holdings (Bahamas), Delta Airlines (Delta), JetBlue Airways Corporation (JetBlue), Spirit Airlines, Inc. (Spirit), and West Jet. [JS 5-10; JX 6-17]. In Terminal 2, in a space provided to Respondent pursuant to its contract with Delta, Respondent maintains its main office at FLL, including office space for Regional Director Yasmin Kendrick (Kendrick), the highest-ranking employee of Respondent at FLL, and a break room for employees who work in Terminal 2. [Tr. 34-35, 45, 53, 174, 504]. Respondent also maintains break rooms for employees to use in Terminals 1 and 4, each equipped with their own time clock; employees of airlines and other contractors do not use these break rooms. [Tr. 35, 45, 177, 261, 512-513]. Respondent leases its Terminal 4 space directly from BCAD, the operator of FLL. [JS 18; Tr. 388]. Respondent's space in Terminal 1 is provided by West Jet. [Tr. 512].

In the course of performing its FLL service contracts, Respondent has directly hired, employed, and compensated approximately 152 rank and file employees and 19 supervisors and managers at any given time since January 1, 2015. [JS 12, 13, 15-17; Tr. 83]. Although a portion of these employees and supervisors work on multiple accounts, most are dedicated to one airline contract. [JS 15-17]. By employee count, employees and supervisors dedicated to specific accounts comprise the following percentage of Respondent's FLL workforce: Delta – 26.9%; Spirit – 26.3%; West Jet – 18.1%; Bahamas – 10.5%.[3] [JS 15-17; Tr. 574-575]. The record does not demonstrate the breakdown of Respondent's revenues and profits derived from each account.

Respondent promulgates its own employee handbook describing many terms and conditions of employment for its employees. [JS 2; JX 3-5]. Respondent also promulgates a

[3] Although there are no dedicated rank and file employees assigned to Respondent's American or JetBlue accounts, there is one dedicated supervisor for the American account. [JS 15-17].

training manual over 900 pages long, which is used as the basis for training all employees when other training is not mandated by Respondent's airline clients. [JX 28; Tr. 428, 483].

The services provided for the various airlines encompass both "above wing" and "below wing" operations. "Above wing" refers to passenger-interfacing roles, such as customer service representatives and agents stationed at TSA checkpoints. "Below wing" refers to baggage handling, aircraft cleaning, and other ramp-level operations. Airlines frequently hire multiple contractors, each performing different aspects of above or below wing operations at a particular airport. [Tr. 215, 231-232, 283-285, 296, 305, 451].

ii. Respondent's Spirit Contract Operations

Respondent and Spirit's first contract for services at FLL has been in effect continuously since June 23, 2010. [JX 15].[4] Paragraph 6 of the contract specifies the relationship of the parties to be "vendor/vendee," that Spirit and Respondent do not have a joint employer relationship with respect to Respondent's employees servicing the Spirit aircraft, and that Respondent "will make all decisions as to the supervision of their respective [sic] employees." [JX 15]. Paragraph 10 reiterates that the relationship is that of "independent contractor," and dictates that nothing in the contract or any related document "shall be construed to create an employer-employee partnership or joint venture relationship between [Spirit] and [Respondent]." [JX 15].

Respondent charges Spirit on a per service basis, charging one rate for the approximately 58 five-to-eight minute "turn" cleanings that occur between an aircraft's arrival and same-day

[4] Like other of Respondent's service agreements, the Spirit "Standard Ground handling Agreement – Simplified Procedure" incorporates the Standard Ground Handling Agreement published by the International Air Transport Association (IATA SGHA) – essentially, a boilerplate contract promulgated by IATA, an industry group. Parties enter into specific "annex" contracts to cover the scope of work at a given location or locations, and which may alter the terms of the IATA SGHA. Respondent's Spirit service agreement incorporates the January 2004 version of the IATA SGHA, which is in evidence as JX 25.

departure, and another for the more thorough "RON" cleanings that occur when aircraft remain overnight at FLL. [JX 15, 16; Tr. 88-89, 215-216, 218, 240, 244, 493-494, 514-515]. The specific services to be performed according to the contract are aircraft interior cleaning by: disposing of litter; clearing waste from seat back pockets and overhead bins; cleaning and tidying seats, seatbelts, seatback pockets; cleaning the inside of the flight deck and cabin windows; wiping seat back tables; vacuuming carpets of passenger and crew areas; emptying and cleaning refuse bins; cleaning surfaces in pantries, galleys, and lavatories; and removing/decontaminating from "airsickness, spoiled food or drink and offensive stains;" collecting and distributing Spirit's provided items for the cabin and lavatories, e.g. toilet paper and airsick bags; disinfecting and/or deodorizing with "materials provided by [Respondent];" and removing and destroying food and other materials remaining from incoming flights. [JX 15, 25 (Annex A, 3.11.1(b,c,e,g), 3.11.2(b,c,d,e,f,g,h,i), 3.11.3, 3.11.8, 3.11.9(b), 3.11.10)]. As many of these services as can be performed in the time allotted for turns are to be done, with the lavatories prioritized. [JX 15]. Spirit "sleeps" three to five aircraft at FLL each night, and Respondent's employees have from approximately 10:30 p.m. to 6:30 a.m. to complete all of the above tasks thoroughly for each airplane. [Tr. 87, 218].

The contract also requires Respondent to provide the disinfecting and deodorizing supplies used to clean the aircraft as well as storage space for Spirit's cabin materials, i.e. the items Spirit furnishes which Respondent's employees use to replenish the cabin. [JX 15, 25 (Annex A, 3.15)]. All supplies are stored in Respondent's Terminal 4 break room closet. [Tr. 260-261].

Respondent supplies all employees working on its Spirit account with a uniform consisting of navy blue pants and a blue shirt with Respondent's name and logo, as well as a

neon yellow safety vest, also printed with Respondent's logo, to wear on the runway. [Tr. 262-265; GCX 16]. Respondent's employees do not wear any articles of clothing or accessories showing Spirit's logo. [Tr. 265].

Aside from a contractual requirement that Respondent keep a "competent work Supervisor… in the general area of [Spirit's] facilities at which the services are to be performed," the contract does not require Respondent to staff any particular number of employees. [JX 15; Tr. 216]. It is therefore Respondent's sole decision to employ 25 day-shift turn cabin cleaners, 10 night shift RON cabin cleaners, 2 cabin leads, 2 dispatchers, 5 shift managers, and 1 operations manager, under general manager Kendrick. [JS 15-17; Tr. 574-577]. Respondent's supervisors generate and publish the work schedules adhered to by Respondent's employees, determining how many employees are needed at particular times to accomplish the turn and RON cleaning services pursuant to Spirit's standards. [JS 20; Tr. 219].

No employee of Respondent reports to a Spirit supervisor, or vice versa. [Tr. 222, 576-577]. Spirit's supervisors and managers do not oversee Respondent's employees as they perform their cleaning services, do not recommend that Respondent discipline, suspend, or discharge employees, do not participate in Respondent's interviews of prospective employees, and do not evaluate the performance of individual cabin cleaners. [Tr. 217, 222-223, 226-227, 260, 267]. Spirit's supervisors and managers have no input or influence on Respondent's decisions regarding employees' time off requests. [JS 14].

Spirit sends Respondent its flight schedule monthly. [Tr. 218, 233-234]. Although there are real-time operational differences between the scheduled and actual flight times due to, for instance, weather delays, the flight schedule is not modified after it is set, and, moreover, changes little from month to month. [Tr. 218-219, 233-235]. In January 2016, Respondent

created a dispatcher position, the result of a collaboration between Respondent's managers and Spirit's managers to address persistent shortcomings in Respondent's performance of turn cleanings, in order to provide real-time updates from Spirit's flight operations center to Respondent's supervisors. [Tr. 32, 219-220, 223, 232]. Spirit agreed to provide Respondent direct access to its flight tracking computer in order to streamline Respondent's provision of service. [Tr. 232-233]. Prior to the use of a dispatcher, Spirit's ramp operations supervisors would radio arriving flight information to Respondent's supervisors. [Tr. 220, 229-230, 233-236]. Respondent's dispatcher is not supervised by any employee of Spirit. [Tr. 221].

The Ramp and Operations Manager for Spirit at FLL, William Rose (Rose), recalled just one incident where Spirit had addressed dissatisfaction related to a specific employee's performance with Respondent's managers. [Tr. 223-227]. Rose emailed Kendrick sometime prior to July 25, 2017, notifying her of several flight delays that had been caused by failure of Respondent's turn cleaning crews to arrive or depart Spirit's aircraft in a timely fashion. [Tr. 223-224; RX 3, page 2]. All of the problems occurred during the shift of Respondent's P.M. dispatcher, Roudelyne Ambeau (Ambeau), and Respondent determined that she should be removed from the account to remedy Spirit's dissatisfaction. [Tr. 225, RX 3, page 2]. Rose did not request that any specific action be taken or that Ambeau be removed, and Rose was not kept apprised of what happened to Ambeau after Respondent determined that she should not be a dispatcher anymore. [Tr. 225]. Respondent offered Ambeau her prior position as a cabin cleaner on its Delta account, but Ambeau declined. [RX 3, page 2]. Kendrick completed a Termination Form to document the end of Ambeau's employment, describing the circumstance as a "voluntary" separation from employment. [RX 3, page 2].

Spirit's Ramp Managers complete weekly audits of at least one turn and one RON cleaning (if possible) through Spirit's Q-Pulse system, which relays the results to Spirit headquarters' Cabin Appearance team for review. [Tr. 217-218, 220, 239-241, 523]. The Spirit Ramp Manager follows a checklist in Q-Pulse, reviewing various aspects of the cabin's cleanliness for quality control. [Tr. 239]. Spirit headquarters then relays feedback to Kendrick regarding the quality of Respondent's RON services. [Tr 568].

Spirit provides Respondent with a computer training module for use by its employees working on the Spirit account. [Tr. 227-228, 241-242, 270]. Neither Respondent nor Spirit controls the room housing the computers, where the training takes place. [Tr. 228, 271, 450]. The room is in a public area of Terminal 4. [Tr. 270-271]. The training is branded with Spirit-specific information on how to clean their aircraft on both turns and RONs. [Tr. 228]. No one from Spirit conducts or oversees the training; Respondent's employees are notified that they need to take the training by their supervisors, who are themselves notified by a message sent to them from Respondent's main office in Terminal 2. [Tr. 229, 271-272]. Respondent also conducts government-mandated training for its cabin cleaning employees. [Tr. 470].

iii. Respondent's Other Contract Operations

a. <u>American</u>

Respondent performs checkpoint agent and janitorial services for American at FLL. [Tr. 284, 493]. The janitorial services are limited to American's back offices in Terminal 3, sweeping ticket counters and bag rooms, and do not encompass any public areas of the airport, which are serviced by a contractor of BCAD. [Tr. 297, 302-303]. Checkpoint agents stand at the entrance to the TSA security lines and direct passengers to the appropriate line for their ticket class and advise them about their carry-on luggage. [Tr. 284-285, 296-297].

There is only one checkpoint agent working at a time, and that agent also services JetBlue passengers, as JetBlue and American have adjoining concourses in Terminal 3. [Tr. 285, 297]. TSA controls the hours of operation of the security checkpoint, which depends in part on American's flight schedule. [Tr. 292]. American's ranking manager at FLL, Gayle Defrancesco, does not communicate American's flight schedule to Respondent, although it is available to Respondent through the BCAD-maintained program "Passur." [Tr. 292-293]. American has never requested that Respondent increase its staffing of the security checkpoint. [Tr. 285].

American's janitorial work is put out for bids periodically. The bids include certain tasks to be completed daily, weekly, monthly, and quarterly, (e.g., daily emptying of waste bins, quarterly washing of windows). [Tr. 286]. Respondent and other contractors bid by submitting the amount of money for which they will perform the specified scope of work. [Tr. 286]. However, it appears that Respondent also bills American according to the actual hours worked by its employees for the American account. [Tr. 304-306]. Nonetheless, Respondent is solely responsible for determining the amount of personnel required to complete the work, how many hours each will work in a day and week, and how much those personnel will earn. [Tr. 286-288]. Although Respondent bills American for "holiday" hours, and the holidays are established by Respondent's contract with American, Respondent's employees receive fewer days as designated holidays than do American's employees. [Tr. 288, 305-306; JX 8]. Respondent employs six janitorial agents during the day, eight janitorial agents during the night shift, and two janitorial agents who specialize in cleaning floors, although only about half work on the American account. (The other half work on Respondent's Delta account; at least one performs work on Respondent's Bahamas account; and at least one performs work on Respondent's West Jet

account.) [JS 15; Tr. 494, 571, 584]. American has never requested that Respondent adjust its staffing of janitorial agents. [Tr. 293].

Although Respondent's contract with American specifies many tasks which will be performed by Respondent's janitorial agents, Respondent's employees do not actually perform some of them. Defrancesco identified as examples that Respondent is not required to clean the Admiral's Club or to clean Venetian blinds in American's back office, because American does not maintain those at FLL. [Tr. 301-302].

Respondent's employees working on the American account reports solely to supervisors of Respondent, not supervisors of American. [Tr. 288-289, 576-577]. American supervisors are not authorized to give orders to Respondent's employees. [Tr. 289]. Defrancesco recounted an incident from the day before her testimony where, instead of speaking directly to a member of the janitorial staff about an area that needed cleaning, she took a picture and sent it to Respondent's Operations Manager, Mike Oviedo, and asked that, if someone were passing near that area that day, that they "pay attention" to it. [Tr. 289].

Although Respondent's contract with American includes something called a "Janitorial Quality Inspection Sheet," Defrancesco testified that she has never used it to grade Respondent's performance and does not perform any routine auditing of Respondent's performance. [Tr. 303-304; JX 7]. If American needs to communicate any service issues to Respondent, Defrancesco communicates with either Kendrick or Operations Manager Mike Oviedo (Oviedo) that more attention needs to be paid to a particular area, such as a restroom. [Tr. 289, 305, 313]. Defrancesco estimates that she makes such a communication, by phone or email, about once every few weeks, and characterized it as "not often." [Tr. 314]. Defrancesco sent one such email in September 2016, informing Oviedo of two incidents that American employees reported

to her about unpleasant interactions each had with an employee of Respondent named "Tony." [RX 2, page 2]. Defrancesco ended the email by requesting that Respondent "Plz [please] speak with Tony." [RX 2, page 2]. Respondent determined that the employee in question was named Hermogenes Antonio Vasquez Ramos (Vasquez), and Kendrick and Oviedo held a meeting with him to address the issue. Kendrick listened to Vasquez's version of events, then "explained to Mr. Vasquez that he will be suspended until further investigation." [RX 2, page 1]. Defrancesco was not involved in the decision to suspend Vasquez. [Tr. 314-315]. Defrancesco expects that Respondent will do its own "due diligence" with respect to its own employees. [Tr. 315].

Defrancesco, who has been in her position at FLL for at least six years, testified that she received guidance from American that issues with business partners' employees are not to be handled by American supervisors and managers. [Tr. 290]. Defrancesco has made that clear to the American staff working under her, and they do not discipline employees of Respondent, or any other contractor. [Tr. 290]. Likewise, American supervisors are not permitted to suspend Respondent's employees by sending them home for the day. [Tr. 290].

American has not requested that Respondent hire a particular employee, transfer a particular employee to its account from that of another airline at FLL. [Tr. 290-291]. American does not mandate any training for either Respondent's janitorial agents or its checkpoint agents. [Tr. 299; JX 7].

b. Bahamas

Respondent provides bag room and ramp baggage services to Bahamas, including "international security" agents in the bag room, as well as janitorial services for Bahamas' back offices. [Tr. 494; JS 15]. Respondent also performs turn cabin cleaning services to Bahamas, which is performed by employees typically assigned to Respondent's Spirit account. [Tr. 463, 505; JS 15]. At some point since February 2016, Bahamas moved from Terminal 3 to Terminal

1 at FLL. [Tr. 495]. Respondent employs four international security agents and 14 ramp agents and leads dedicated to the Bahamas account. [JS 15]. There is no supervisor dedicated to the supervision of Respondent's employees working on the Bahamas account. [JS 17]. Respondent provides all cleaning supplies and equipment used for cabin cleaning and janitorial services performed on the Bahamas account. [Tr. 505]. There are not typically RONs for Bahamas aircraft at FLL. [Tr. 505-506]. Respondent's employees working on the Bahamas account wear uniforms issued by Respondent and bearing Respondent's name and logo. [Tr. 507-508; GCX 16].

Respondent determines how many staff are required to complete the contractual requirements according to Bahamas' satisfaction. For example, on November 21, 2016, Bahamas Station Manager Mavis Smith emailed Kendrick to remind her that a peak travel season was beginning and that "we will have 3 aircrafts on the ground at the same time and it is imperative that you have adequate staffing to accommodate our needs…. We are in peak season and our flights are coming and going out full so therefore we need the manpower to accommodate the loads." [RX 10]. Bahamas did not advise Respondent how to accommodate the extra "manpower" request, and Kendrick testified that the action she took was "to reshuffle the schedules" of the existing employees, rather than hire additional staff. [Tr. 519-520].

Respondent utilizes its own ramp training program to train its ramp employees working on the Bahamas account. [Tr. 463-464]. Bahamas signed off on this program, although Respondent conducts additional on-the-job training that what is required by the "training program" Respondent "adapted" for use by Bahamas. [Tr. 462-464]. Bahamas does not require any Bahamas-created training for Respondent's cabin cleaners working on its account. [Tr. 463].

On August 10, 2016, about a month prior to the incident described above with Vasquez, Oviedo completed a disciplinary form for Vasquez regarding an incident that occurred while he was working on Respondent's Bahamas account. [GCX 8(a)]. Bahamas' Assistant Station Manager, Guillermo Salinas (Salinas), emailed the following to Oviedo at 9:02 p.m. on August 8, 2016:

> Good evening Mike, I want to bring to your attention an incident that [happened] sometime last week unfortunately I [don't] remember the date but it was earlie[r] in the week around 7:30 PM and 8:00 PM the cleaning person was very rude and unprofessional to me only because the garbage cans at the ticket counter were full of garbage and some was on the floor [from] a long day of [processing] customers. This is a busy summer so we are going to have plenty of garbage. His words to me were [he's] not doing this s*** any more for Bahamas Air and he was very loud and at the time we had still some customer at the counter [which] was very unprofessional to do in front of them. So today he came back and just empty the garbage cans and he left but the floors and counters were left unclean. His attitude towards Bahamas Air is not [appreciated], we are customers and we need to be [treated] as such. Thank you for your time.

[GCX 8(b), (sic), original in all capital letters and changed for ease of reading.] Respondent decided to issue Vasquez a final written warning and remove him from the Bahamas account, transferring him to the American account. [GCX 8(a)]. Respondent noted on the form, "Even though this offence is ground for termination we believe [in] giving our employees a second opportunity." [GCX 8(a)]. Although the form noted that failure to meet Respondent's performance expectations would result in further disciplinary action, up to and including termination, Vasquez was merely suspended, not discharged, when similar unprofessional conduct was reported to Respondent by American just a month later. [RX 2].

c. Delta

Respondent's contract with Delta is for the provision of turn and RON cabin cleaning, aircraft lavatory water service, and janitorial services. [JS 15; Tr. 499-505, 509]. The contract leaves staffing and supervision up to Respondent's discretion, so long as it is "sufficient and

proper… to meet the hours of operations and service requirements specified by Delta," i.e., complete the work required in the time allotted. [JX 11, page 2]. Thus, Respondent employs 30 turn cabin cleaners, seven RON cabin cleaners, three day-shift LAV truck operators, and one RON LAV truck operator to perform these duties. [JS 15]. Five Shift Managers oversee the cabin cleaners. [JS 17]. Respondent determined sometime during Alexandre's employment that it required more staff to meet Delta's expectations, and hired additional cabin cleaners to dedicate to service of that account, instead of using cabin cleaners from the Spirit account to perform RON service on Delta aircraft. [Tr. 257]. Respondent is compensated on a per-service basis for turn and RON cabin cleaning and lavatory service. [JX 12, page 2].

All of Respondent's employees performing work on the Delta account wear Respondent's standard-issue uniform. [Tr. 507-508; GCX 16]. Respondent's main office in Terminal 2 is adjacent to a hallway containing Delta's offices, and is furnished to Respondent by Delta. [Tr. 34-35, 45, 53, 174, 504]. However, Respondent's employees use a separate door than do Delta employees. [Tr. 457].

Once per week, Delta hosts a meeting with its business partner representatives, including Kendrick, and its own above and below wing management staff. [Tr. 499-500]. After addressing safety issues, Delta Station Manager Daryl Lyam reviews each department's "KPIs," a performance index score. [Tr. 499-500]. Respondent's performance of Delta's cabin cleaning service is addressed during this meeting; the score is calculated based on passenger surveys about cabin cleanliness. [Tr. 500]. Kendrick testified that she also has daily discussions with Delta management about supplies, KPIs, and employee training. Respondent provides the vacuum, Hokeys, and gloves used by its employees, while Delta provides the rest of the cleaning supplies and passenger amenity supplies, such as hand lotion for the lavatory and blankets in the

cabin. [Tr. 501-502]. Respondent stores all supplies used on Delta aircraft in a closet in its main office in Terminal 2. [Tr. 502]. Respondent tracks its use of all supplies and communicates weekly with Delta regarding which Delta-supplied items are running low. [Tr. 502-503]. Delta also furnishes the LAV truck, garbage cart, and "tugs" used to pull the garbage cart, all of which are used by Respondent's employees in performing cabin cleaning and janitorial tasks. [Tr. 508].

Delta requires that Respondent's employees complete Delta-created training annually in order to be authorized to perform work on its aircraft. [RX 5; Tr. 456-459]. Delta maintains the records of this training and emails Respondent a list of employees approaching the deadline to complete the training each month. [RX 6]. Delta maintains the training room housing the computers upon which Respondent's employees complete Delta's training modules. [Tr. 456]. Respondent also conducts some of the training on the job, using a trainer employed by Respondent and trained by Delta. [Tr. 459-460].

d. JetBlue

Respondent's only service for JetBlue at FLL is checkpoint services. As described by Francesco, the same checkpoint agent serves American and JetBlue, which share a TSA security line at Terminal 3 for their adjoining concourses. [Tr. 285, 297]. Respondent's employees working on the JetBlue account wear uniforms issued by Respondent and bearing Respondent's name and logo. [Tr. 507-508; GCX 16]. JetBlue does not provide training for Respondent's FLL employees. [Tr. 471-474].

e. West Jet

West Jet flies an average of two aircraft daily between Toronto, Canada and FLL Terminal 1. [Tr. 513, 518]. Kendrick acts as West Jet's "liaison" with the governmental authorities at FLL, and communicates with West Jet corporate through West Jet's regional

director for the United States. [Tr. 496-498]. Respondent employs approximately 14 passenger service (counter) agents, 13 ramp agents (baggage handlers who load and unload passenger bags from the aircraft), and uses some of its janitorial staff to clean the West Jet areas. [JS 15; Tr. 494]. Respondent has one dedicated supervisor for this account, the West Jet Operations Manager. [JS 17]. Respondent's employees also provide the turn cabin cleaning service for that aircraft; there is no RON for West Jet as the flights depart the same day they arrive. [Tr. 505-506, 518]. Respondent provides all cleaning supplies and equipment used for cabin cleaning and janitorial services performed on the West Jet account. [Tr. 505].

Respondent's employees who work at the West Jet ticket counter are the only employees at FLL who do not wear Respondent's typical uniform and, instead, wear a West Jet uniform as well as West Jet-branded nametags. [RX 7; Tr. 507-508; GCX 16].

B. Broward County Aviation Department's Credentialing Process

All individuals working in the "SIDA," or secured, areas of FLL are required to hold a valid badge issued by BCAD. [Tr. 32-33; 92, 166]. Badge holders must swipe a device next to locked doors and put in their PIN to gain access secured areas. [Tr. 46]. All applications for both initial and renewal badges must be completed by the designated signatory of the individual's sponsoring employer, and verified and signed by the individual themselves. [Tr. 33, 92, 168, 394; JX 22; GCX 3, 7(b), 14(a) and (b)]. Printed and signed applications are then hand-delivered by the individual to BCAD's office, located on the airport property in an area separate from the four passenger terminals. [Tr. 33, 169, 396-397].

BCAD processes the application, fingerprints the employees, and commences its background investigation, which typically takes between three and five days. [Tr. 396-398]. BCAD instructs individuals that once the background check is finished, they will be notified by their signatory when they can return to the BCAD office. [Tr. 149, 398, 407]. Assuming the

individual passes the background checks and TSA authorizes issuance of the badge, BCAD sends an email to the sponsoring employer's designated signatory representative notifying them of "media approval." [JX 23; Tr. 33-34, 149, 397-400]. BCAD does not notify the employee individually. [Tr. 398]. The notification email states:

> **The individual above *must bring a PRINTED COPY* of this approval with them, a government issued photo ID, and their FLL Airport Issued Identification Media if applicable/renewing when they arrive to take training.**

[JX 23, all emphasis original]. Although it is technically possible for the individual who has been approved to show up at BCAD empty-handed, the Enterprise Director of Security for BCAD, Frank Capello, noted that over 15,000 individuals work at FLL and the credentialing office often sees up to 320 of them per day. [Tr. 393, 403-404]. Therefore, BCAD does not advertise that individuals may arrive without the approval email in hand. [Tr. 179-180, 407]. Employees are processed on a first come, first served basis when they return to the BCAD office to complete the training and test regarding the security of the airport and their credential, after which BCAD issues an active badge. [JX 23; Tr. 397-400]. The email notes that the hours of operation for this purpose are Monday through Wednesday, and Friday, 8:00 a.m. to 1:30 p.m., and Thursday from 10:00 a.m. to 1:30 p.m. [JX 23].

An initial badge expires six months after its issuance date. [Tr. 54, 167, 172; GCX 14 (a)]. The first renewal badge is valid for a year from the expiration of the initial badge, and a second renewal is valid for up two additional years, expiring on the individual's birthday following the first additional year. [Tr. 54, 168; GCX 14(b)]. The credentialing process is largely the same regardless of whether an employee is a new applicant or applying for a renewal. [Tr. 400]. Individuals are required to take BCAD's security training and test prior to receiving either an original or a renewal badge. [Tr. 403]. Employees whose badges have expired are

treated like new applicants, although BCAD keeps their original application materials on file. [Tr. 404, 407].

For Respondent, the signatories of record during April 2016 were an office administrative assistant, Jodi-Ann Pagon (Pagon); Kendrick's predecessor as Regional Director at FLL, Marco Sosa (Sosa); and Ronald Sanchez Vergara, Sosa's predecessor. [JX 23]. Respondent's process for notifying employees that it was time to return to the BCAD office to complete the final step of the badge process was to call the employee and tell them the paper was ready to pick up, or, in some instances, notify the employee's supervisor the renewal notification was ready. [Tr. 40-41, 170-172, 328, 419-420].

C. The Union's Drive to Organize Employees of Airline Contractors

Since about 2012 or 2013, the Union has stationed organizers at FLL and other airports to organize cabin cleaners, skycaps, wheelchair assistants, ramp agents, janitors, checkpoint agents, and security officers employed by airline contractors, including Respondent. [Tr. 120]. Periodically during the campaign, the Union "escalates" its efforts, increasing its presence at the airport and holding extra events or actions in advance of large actions, like strikes. [Tr. 121].

The Union's lead organizer at FLL, Harris Harrigan (Harrigan), typically spends about five to six hours per day, each working day, at the airport during periods of escalation. [Tr. 123]. Harrigan and the other organizers working under him typically spend the majority of their time on the lower, "ramp" level of each terminal, where the baggage claim carousels and employee access doors to the SIDA areas are located. [Tr. 122]. The organizers speak to employees as they are coming and going through the access doors, either before or after their shifts or during their breaks. [Tr. 272].

Supervisors use the same access doors, but wear different uniforms than Respondent's rank and file employees and are thus identifiable by the organizers. [Tr. 147, 266]. The

organizers similarly wear recognizable clothing identifying them as Union organizers, typically in the Union's official colors of purple and yellow. [Tr. 124-125; GCX 17]. Supervisors make eye contact with the organizers, indicating that they know them on sight, if not by name. [Tr. 123]. Kendrick has emailed corporate officers before upon witnessing the presence of Union organizers, including this email sent on August 15, 2016, to Chief Operations Officer Livan Acosta (COO Acosta) and Director of Human Resources Cindy Tunon (HR Dir. Tunon):

> **[Subject:] Members of the union wearing purple uniform shirt were sitting outside by DL [Delta] baggage service**
>
> Good afternoon,
> While walking back from T1 to T2 I saw them sitting there.
> The lady that is usually here was not at this time with the three (3) ones 2 females and 1 male, that I saw.
> Will keep you up to date if I hear anything.

[GCX 9].

The Union held 24-hour strikes at FLL, one from 2:00 p.m. on November 18, 2015, until 2:00 p.m. on November 19, 2015, and another from 5:00 p.m. on March 30, 2016, until 5:00 p.m. on March 31, 2016. [GCX 10(a),11(a), 12(a), 13(a); Tr. 121-122]. According to the Union's reconnaissance, 34 or 35 of about 100 scheduled employees of Respondent participated in the November 2015 strike, while about 70 of about 100 scheduled employees participated in the March 2016 strike. [Tr. 137-138]. The Union deemed the March 2016 strike more successful than the November 2015 strike; supervisor Wilner Baptiste remarked to Harrigan during the late night between March 30 and 31st, 2016, that the Union was really "kicking my ass" with the participation in the latter strike. [Tr. 141-144, 147-148].

D. Joanne Alexandre's Employment with Respondent and Involvement in the Union's Organizing Campaign

i. Background

Joanne Alexandre (Alexandre) began working for Respondent on about October 21, 2014, as a RON Cabin Cleaner on Respondent's Spirit account. [Tr. 165-166; JX 21]. Prior to her hire, on sometime in September 2014, Alexandre participated in a group interview conducted by then-Regional Director Sosa and Aurea "Audie" Mendez (Mendez), an administrative employee. [Tr. 76, 267]. During the interview, the applicants were given preliminary training regarding their job duties as cabin cleaners, and were given papers to go take a drug test. [Tr. 268]. After the drug test results arrived, Mendez called Alexander to come complete her initial BCAD badge application, which Alexandre did on about October 1, 2014. [GCX 14(a); Tr. 268-269]. Alexandre took the application to the BCAD office that same day, where BCAD fingerprinted her, told her that BCAD would send "the result" to Respondent's office, and Respondent would let her know what to do next. [Tr. 170-171, 268-269].

Sometime after that, Mendez called Alexandre and told her to come pick up a paper, and to call when she arrived, as Alexandre could not yet access Respondent's office. [Tr. 171-172]. Alexandre called Mendez, who brought her the approval email, and then proceeded that same day to the BCAD office to take the badge security test. [Tr. 172]. BCAD issued Alexandre her initial badge, with an expiration date of April 20, 2015. [Tr. 173; GCX 14(a)].

Alexandre's supervisor was primarily Wilner Baptiste (Baptiste), although Hubert Headlam (Headlam) supervised the RON cabin cleaners in Terminal 4 on Baptiste's nights off. [Tr. 165, 259-260]. Occasionally, supervisor John Marrast (Marrast), who worked primarily on the Delta account at Terminal 2, would come to Respondent's break room in Terminal 4 to deliver or pick up reports. [Tr. 247, 255]. On the first day that Alexandre reported to work,

Marrast and a supervisor named Jean (a male whose last name is not reflected in the record) showed the employees how to buckle the seatbelts, clean the aircraft's bathrooms, windows, and galleys, and where the cabin cleaning supplies were located in the Terminal 4 break room. [Tr. 269-270]. At some point "way after" she started working, Baptiste notified Alexandre that she needed to complete the Spirit computer training module described above. [Tr. 270-272].

At the beginning of her employment, Alexandre and her coworkers would go to Terminal 2 to clean Delta aircraft after they completed their work, approximately two or three times per month. [Tr. 257]. At some point, however, Respondent hired more cabin cleaners to work the Delta account, and this practice ended. [Tr. 257-258].

When Alexandre's initial BCAD badge expired in April 2015, she followed the same process as she had initially, and Mendez called her to notify her that the approval paper was ready to be picked up. [Tr. 173, 321-322].

ii. Alexandre's Union Activities

Sometime in 2015, Alexandre learned that the Union maintained a presence at FLL. [Tr. 272]. Alexandre would speak with organizers after her shift and gave them information relevant to the campaign. [Tr. 272]. Alexandre participated in several Union events during the course of her employment with Respondent, including both the November 2015 and March 2016 strike. [Tr. 139, 272-274; JX 24]. During the March 2016 strike, Alexandre wore a purple Union T-shirt and participated in a strike march. [Tr. 273-276]. Alexandre was on the schedule for the evening of March 30, 2016, and "practically all" of her coworkers scheduled on the RON shift participated in the strike as well. [JX 24; Tr. 277]. That evening, Alexandre and her coworkers reported to a hotel to spend the night. [Tr. 273]. The strike line march between Terminal 1 and Terminal 2 occurred early in the morning of March 31, 2016, commencing around 6:00 a.m. [Tr. 273]. During the strike march, Alexandre saw Respondent's supervisors leaving the terminals,

walking on the sidewalk opposite them across the airport's main road, on their way to the employee parking lot after their shifts. [Tr. 276-277].

On March 31, 2016, or April 1, 2016, during the shift following the strike, Baptiste told RON cabin cleaners, including Alexandre, that he was angry that he had to clean five aircraft himself because they had not shown up during the strike. [Tr. 277-278].

iii. Respondent Discharges Joanne Alexandre

On April 5, 2016, Alexandre went to Respondent's Terminal 2 office and completed the renewal application for her BCAD badge, which was set to expire on April 20, 2016. [Tr. 173-174, 328-329; JX 22]. Administrative Assistant Pagon signed the application as Respondent's designated signatory. [JX 22]. Alexandre took the application the same day to the BCAD office for fingerprinting. [Tr. 174]. The agents in the BCAD office instructed Alexandre that in about eight days, they would contact Respondent's office for Alexandre to go pick up the approval, and that would allow her to take the test to obtain the new badge. [Tr. 175]. On April 11, 2016, BCAD sent Respondent the notification approval email for it to print and give to Alexandre. [JX 23; Tr. 38, 81-82]. Kendrick forwarded it that day to Mendez and Pagon. [JX 23].

However, neither Alexandre, nor her supervisor Baptiste, were notified that the email was available until at least April 27, 2016. [Tr. 175-178, 418]. As April 20 approached, Alexandre and Baptiste discussed the form each night in the Terminal 4 break room when she arrived for work at 10:30 p.m. and during breaks in each shift. [Tr. 175-177,_329-330, 413-417]. Alexandre worked on April 11, 12, 13, 16, 17, 18, and 19 – seven nights, in all, between Respondent's receipt of the email and the badge expiration. [JX 24]. After the badge expired, Alexandre was scheduled to work on April 23, 24, 25, 26, and 27, but was unable to attend work without access. [JX 24; Tr. 166]. She continued to call Baptiste during this time, but neither heard that the email had been sent to Respondent for pick-up. [Tr. 177-178, 341-342]. Although

the email, by its terms, was invalid for use after the expiration of the badge, Marrast nonetheless informed Baptiste that it was ready on April 27, 2016, and Baptiste then passed the message on to Alexandre. [JX 23; Tr. 177-178, 418].

Thus, on April 28, 2016, Alexandre arrived at Respondent's Terminal 2 office in the morning and called the office. [Tr. 178]. Mendez brought the approval email, now invalid on its face, out into the public area of the terminal and gave it to Alexandre. [Tr. 178, JX 23]. Alexandre immediately took the paper and her expired badge to the BCAD office, where BCAD informed her that she would not be able to take the test because her badge was already expired. [Tr. 178]. BCAD instructed Alexandre to return to Respondent's office and complete a new application. [Tr. 178]. BCAD kept the expired badge. [Tr. 37].

Alexandre then returned immediately to Terminal 2 and once again called Respondent's office. [Tr. 178]. Alexandre waited for about two and a half hours for Mendez to come out, then called again. [Tr. 178]. Mendez said she was busy, and then about fifteen minutes later, around 1:00 or 2:00 p.m., came out and said she would not be able to do anything for Alexandre because Alexandre's badge had expired. [Tr. 178-179]. Mendez told Alexandre that she was no longer employed by Respondent. [Tr. 179]. Alexandre asked Mendez if she could fill out a new employment application again and be rehired. [Tr. 179]. Mendez informed her that no, there was no vacancy. [Tr. 179]. Mendez also claimed that Respondent had attempted to reach Alexandre many times but she had changed her phone number, because Alexandre had never returned their calls. [Tr. 179]. Alexandre refuted this, stating that Mendez had called her before, and Alexandre did not have any missed calls. [Tr. 179]. (In fact, Alexandre's personal cell phone number has not changed since 2010.) [Tr. 171]. Mendez concluded the conversation by wishing Alexandre "Good luck." [Tr. 179].

Sometime before Alexandre was discharged by Respondent, she was texting with supervisor Marrast about her situation and asked him to ask Kendrick what the reasons are that she didn't have the paper to give to Alexandre so she could take the test to renew her badge. [Tr. 248-249]. Marrast texted later that Kendrick would not answer the question. [Tr. 249]. After her discharge, Marrast texted that he would talk to Kendrick and ask her why this had happened, because it had "never occurred [before] that someone would be fired because they hadn't renewed the badge." [Tr. 249]. Marrast reported back to Alexandre that Kendrick would again not give an answer. [Tr. 249].

On April 29, 2016, administrative assistant Pagon completed a Termination Form for Alexandre's personnel file. [JX 21]. The reason for the termination was recorded as "involuntary – violation of company policy/misconduct" and "involuntary – other." [JX 21]. Alexandre was deemed ineligible for rehire. [JX 21]. In a section entitled "Details Pertaining to Separation," the following narrative was recorded:

> Ms. Joanne Alexandre badge was confiscated by BCAD as it was expired for 8 days already although we made all possible attempts to communicate to Ms. Alexandre to come in to take the class prior to the expiration of the ID.

[JX 21 (sic)].

The Union filed the charge in Case 12-CA-176653, alleging that Alexandre's discharge was unlawful, on May 20, 2016, and Respondent was served with a copy of the charge on about May 23, 2016. [GCX 1(t), para. 1(d), and GCX 1(v), para. 1(d)].

E. Other Employees' History with BCAD Credentialing Process

i. Employees Whose Credentials Were Not Renewed

On March 1, 2015, Sabine Angrand (Angrand), a supervisor of Respondent, completed a Separation Report for employee Natalia Pichardo (Pichardo). [RX 1, page 4]. The reason for the separation was recorded as "involuntary – violation of company policy," and Angrand noted that

Pichardo had "refused to meet with Broward County regarding her missing/found badge by BCAD employee." [RX 1, page 4]. Pichardo was marked ineligible for rehire. [RX 1, page 4].

On October 4, 2015, Mendez completed a Separation Report for employee Sylvania Jeanty (Jeanty), an employee who had been hired on January 20, 2015. [RX 1, page 3]. Mendez, whose job title on the form is given as "Operations Manager," recorded on the form that the reason for separation was "voluntary – job abandonment," because Jeanty "allowed badge to expire, never returned to work." [RX 1, page 3]. Jeanty's initial BCAD badge would have expired on about July 20, 2015, six months after it was issued at the outset of her employment. [Tr. 54, 167, 172]. Jeanty was marked ineligible for rehire. [RX 1, page 3].

On October 20, 2016, Kendrick completed a Termination Form for employee Charilus Nodieu (Nodieu), whose last day worked was October 10, 2016, the day his badge expired. [GCX 4(a) and (b)]. Although the reason for separation is marked "Involuntary," Kendrick also marked Nodieu as eligible for rehire. [GCX 4(a)]. Kendrick recorded the details as: "he took the SIDA class 3 times and he did not pass." [GCX 4(a)]. In a further note Kendrick wrote to Odalys Perez (Perez), an administrator at Respondent's headquarters who processes termination forms, she noted that Nodieu was given the paperwork "on time (10 days prior to expiration)," and that "BCAD requested his ID, we sent it and could not do anything else." [GCX 4(b); Tr. 56-57]. Kendrick testified that Nodieu would indeed be eligible for reemployment with Respondent if he were to reapply and pass the SIDA class. [Tr. 56-57].

On June 7, 2016, administrative assistant Pagon completed a Termination Form for employee Deland Wheeler, whose last day of work was May 23, 2016.[5] [GCX 5]. Wheeler's

[5] Although Kendrick did not answer the question as to whether the name of the employee was "Wheeler Deland" or "Deland Wheeler," based on her testimony that this individual died after the form was filled out, the judge may take

discharge was marked as "involuntary," for the reason that TSA did not approve his badge renewal, and on this basis, Respondent determined that he was ineligible for rehire. [GCX 5; Tr. 59].

On February 26, 2017, supervisor Marrast issued two disciplinary forms to employee Tevin Charles (Charles). [GCX 6(b) and (c)]. The first recorded Charles as a "no call no show" on February 17, 2017, and was marked "Final Written Warning." [GCX 6(b)]. The second states that Charles "left without telling his supervisor 'Everard' he had one aircraft without cleaning it" [sic]. [GCX 6(c)]. The second form noted the disciplinary action to be taken as "Termination." [GCX 6(c)]. On February 27, 2017, Kendrick signed both discipline forms, adding a handwritten note to the latter: "Mr. Charles left his ID after this warning. Which ID will expire 3/1/17 he will not be renewing and we will proceed with termination." [GCX 6(b) and (c); Tr. 61-62]. On February 28, 2017, administrative assistant Edith Carbonara filled out a Termination Form for Charles, marking "voluntary – other" for reason of "the employee did not renew his badge." [GCX 6(a)]. Charles was deemed eligible for rehire. [GCX 6(a)].

On March 2, 2017, Carbonara completed a Termination Form for employee Fordline Jean-Baptiste (Jean-Baptiste). [GCX 2]. The reason checked on the form was "Voluntary – Other," and the "details pertaining to separation" were that "the employee did not renew her badge." [GCX 2]. Jean-Baptiste was marked eligible for re-hire. Jean-Baptiste had not submitted a renewal application to BCAD. [GCX 3, Tr. 53-54]. According to Kendrick, administrative assistant Pagon spoke to Jean-Baptiste about completing the application, Jean-Baptiste indicated that she was thinking of relocating to Tampa, and did not want to renew her badge. [Tr. 49-50]. Jean-Baptiste's last day of work was January 29, 2017. [GCX 2].

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administrative notice of public records indicating that Broward County resident Deland Wheeler died on June 20, 2016. [Tr.58-59].

However, her badge would not have expired until at least the end of February 2017.[6] Kendrick testified that the reason the badge renewal was cited on the form, rather than "relocation" – the first reason given on the form – was that she had not moved, she had just told Respondent that she was thinking about moving. [Tr. 49-50].

On July 6, 2017, Kendrick completed a Termination Form for employee Leonard Cadet (L. Cadet), whose last day worked was June 11, 2017. [RX 1, page 8]. Kendrick recorded the reason for L. Cadet's separation as "involuntary – other," and described the details as "employee ID expired and he lost his document for that reason he could not renew his badge." [RX 1, page 8]. Kendrick noted on the form that L. Cadet was eligible to be rehired in the future. [RX 1, page 8].

ii. Employees Whose Credentials Were Renewed

Sometime in 2015, a cabin cleaner named Fara Larock ("Larock") who worked on Respondent's Spirit account on the 3:00 p.m. to 11:00 p.m. shift was out of work for at least three weeks when her badge expired and she had to reapply. [Tr. 251-254, 349]. A cabin cleaner on the 6:00 a.m. to 3:30 p.m. shift, Alexander (his last name is not reflected in the record), had the same situation occur sometime after Larock's lapsed renewal. [Tr. 251-254, 349]. Sometime after Alexander's situation, supervisor Marrast's badge expired and he also missed several days of work while it was reactivated. [Tr. 255-256, 525-526].

[6] Original BCAD badges expired six months after their issuance date. [Tr. 54]. Although the record is not clear as to the issuance date of Jean-Baptiste's original badge, she completed her original badge application on August 20, 2016. [GCX 3]. Assuming the shortest possible timeline for completion of the background investigation and final security training at the BCAD office, it could have issued as early as August 24, 2016, making its earliest expiration date February 24, 2017. [Tr. 397-398].

On June 20, 2016, BCAD emailed Respondent an approval notice for employee Allison Benjamin (Benjamin). [RX 12 (page 5)]. Benjamin, a RON cabin cleaner working on Respondent's Spirit account, had participated in the March 2016 strike. [Tr. 348].

On June 27, 2016, BCAD emailed Respondent an approval notice for employee Jean Cadet (J. Cadet). [RX 12 (page 1)]. Pagon forwarded the email to the address "FLLspiritmanagers@eulen.com" with the message "please have this employee see me." [RX 12 (page 1)]. J. Cadet was also a RON cabin cleaner working on Respondent's Spirit account, and had also participated in the March 2016 strike. [Tr. 348].

On February 28, 2017, Carbonara completed a Termination Form for employee Jean Villain (Villain), whose last day of work had been February 24, 2017. [GCX 7(a)]. The reason listed was "Voluntary – Other" and "the employee did not renew his badge." [GCX 7(a)]. Villain was marked eligible for rehire. [GCX 7(a)]. On March 8, 2017, Carbonara and Villain signed his application for a new "original" badge from BCAD. [GCX 7(b)]. Villain, a non-citizen, was issued a new badge that would expire on the date his work permit expired, and Respondent completed a "New Hire Payroll Information Sheet" for Villain on March 27, 2017. [GCX 7(c) and (d)].

III. Argument

As an initial matter, the witness testimony offered by Alexandre and the airline representatives, Gayle Defrancesco and William Rose, was forthright, consistent, and logical. On the other hand, Respondent's witnesses presented at the hearing failed to offer a consistent, coherent version of the events of April 2016; Respondent's own supervisor, Baptiste, corroborated Alexandre's testimony that she was not notified that Respondent had her renewal authorization ready for her for more than two weeks. Therefore, although Respondent contends

that Alexandre voluntarily ended her own employment by failing to renew her BCAD credential, the sum of the credible record evidence shows that Respondent seized the opportunity to rid the workplace of a vocal, visible Union supporter immediately after the employees went on strike in support of the Union, higher wages, more hours, and better benefits. No other employees who participated in the strike were discharged because Respondent saw no other pretext which it could use to mask its motives for doing so, and the discharge of Alexandre sent the message that support for the Union would not be tolerated. But for Alexandre's participation in the March 30-31, 2016 strike, Respondent would have furnished her with the necessary renewal email in a timely fashion, instead of manufacturing flimsy grounds for termination. Respondent unlawfully discharged Alexandre, in violation of Section 8(a)(3) of the Act.

A. Respondent's Supervisors, Managers, and Agents Presented Conflicting, Contradictory Testimony that Should Not Be Credited Where it Conflicts with Other, Credible Record Evidence

In making credibility determinations, administrative law judges may rely on a number of factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op. at 7 (2014). The Board has cited with approval administrative law judge's discrediting of current employees who testify on behalf of the employer, reasonably inferring that the employee may be reluctant "to incur the Respondent's disfavor." *Classic Sofa, Inc.*, 346 NLRB 219, 220 at n. 2 (2006).

A trier of fact may also draw the "strongest possible adverse inference" against a party that fails to present a material witness presumed to be favorable to it, sometimes called the "missing witness rule." *Flexsteel Industries, Inc.*, 316 NLRB 745 (1995); *Douglas Aircraft Company*, 308 NLRB No. 179, 179 fn. 1 (1992); *Martin Luther King, Sr. Nursing Center*, 231

NLRB 15, 15 fn. 1 (1977). This is particularly true where the "missing" witness is the respondent's agent, "within its authority or control. It is usually fair to assume that the party failed to call such a witness because it believed the witness would have testified adversely to the party." *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006), citing *Automated Business Machines*, 285 NLRB 1122, 1123 (1987).

At several points, Kendrick's testimony both that Alexandre's discharge was perfectly routine and that Respondent's FLL operations are thoroughly governed by the airlines was contradicted by other record evidence, or by the omission of potential evidence within Respondent's control. Kendrick's demeanor on the witness stand also diminished her credibility, as she was overly vocal about her benevolent treatment of her "most valued staff" and was very reluctant to admit to facts that she knew would undermine Respondent's jurisdictional argument. [E.g., Tr. 575-578]. For example, Kendrick testified that Delta "recommended" that she hire a particular employee for an opening, but later admitted that, in fact, she solicited the input of a Delta supervisor on the personnel she was already considering, and chose to pick the employee that the Delta supervisor said was a hard-worker. [Tr. 509-510, 557-558]

The major factual dispute of the unfair labor practice portion of this litigation is whether Alexandre failed to pick up her approval email from Respondent due to her own negligence, or whether Respondent purposefully withheld it from her. Although Kendrick testified that the process for delivering the BCAD approval notification email to the particular individual named in it was for Pagon to call the employee at their phone number, deliver a copy of the email to a bulletin board next to the time clock in the terminal break room the employee uses, and to keep a copy in the main office in Terminal 2 so the office staff would know "who we may have to continue [to] reach," Alexandre testified that Respondent never posted "such information" in the

break room on the bulletin board, and the process was for someone in the office to call you or for your supervisor to tell you to go pick it up from Terminal 2. [Tr. 39-40, 328]. This was corroborated by Respondent's own witness, Alexandre's former supervisor, Baptiste. [Tr. 419-420]. Furthermore, Kendrick had no specific memory of Baptiste being informed that Respondent had received the approval email from BCAD, and since Baptiste in fact was not notified until about April 28, 2016, no weight can be given to Kendrick's testimony about Respondent's "normal" procedure, or, by extension, that there was no animus driving Alexandre's discharge.

Respondent failed to produce several documents within its possession which could either bolster Kendrick's credibility or discredit Alexandre. For example, Alexandre identified three employees whose badges lapsed and were permitted to return to work once they had reapplied to BCAD, Fara Larock, Alexander, and supervisor Marrast. Kendrick only testified about the circumstances relating to Marrast. Payroll records, time sheets, BCAD approval emails, or photocopies of the active badges (showing their expiration dates) are all within Respondent's control, yet Respondent did not introduce any of it to refute Alexandre's credible testimony about these three employees' badge expiration being treated as a non-incident by Respondent.

Similarly, Kendrick's testimony with respect to the extent of control exerted by the airlines on Respondent's operation could have been bolstered by the production of emails between her and Spirit manager Rose regarding the dispatcher who was removed from the Spirit account, Roudelyne Ambeau. Rose testified that he emailed Kendrick with detailed descriptions of Respondent's shortcomings, noting the time lag between the arrival of various Spirit flights and the arrival of Respondent's turn cabin cleaners, and the subsequent service delays caused for Spirit's passengers. Kendrick testified that Rose asked Respondent to remove Ambeau from the

operations center. Rose testified that he did not ask for any specific action be taken, and sought only an improvement in Respondent's performance of its contractual obligations. Although Ambeau's removal effected that improvement, Rose did not ask that Respondent choose that course. Kendrick's testimony on this point should be discredited, as the relevant emails are within Respondent's control but were not introduced or offered at the hearing. Likewise, Kendrick's testimony that she discharged employee Willard Delancy at the request of Bahamas manager Salinas should be disregarded. [Tr. 535-537; RX 3 (page 1)]. Moreover, to the extent that Respondent presented other emails purporting to indicate airline control over its personnel decisions and operations, it is permissible to infer that these were cherry-picked and are not representative of Respondent's actual relationship with the airlines.

For the same reasons, Respondent's contention that its staffing levels are controlled by the airlines should be discounted in the face of evidence that it retains discretion to determine what those staffing levels actually are and make changes it deems necessary in order to perform its contractual obligations. Alexandre testified that sometime during her employment, Respondent hired additional cabin cleaners to dedicate to service of the Delta account, and she and other Spirit cabin cleaners no longer were tasked with RON cabin cleaning in Terminal 2. [Tr. 257]. The record is devoid of any emails showing that Delta was dissatisfied with Respondent's RON cabin cleaning services or that it asked Respondent to remedy any dissatisfaction by hiring additional cleaning staff. Therefore, an inference should be drawn that Respondent determined that it was necessary to hire additional cabin cleaners, not to use employees from the Spirit account, for its own business reasons, not at the behest of Delta.

Additionally, Respondent's training director, John Foster, did not appear to have any knowledge about Respondent's training programs that was specific to FLL. Instead, Foster

testified mostly in generalities, and, when asked about specific details at FLL, such as which services Respondent provides for JetBlue, he was incorrect. [E.g. Tr. 471-472]. Therefore, his testimony should be weighed lightly, and discredited when placed against the contradictory evidence in the record, such as Spirit manager Rose's testimony that Respondent's employees' training on the Spirit module occurs in a room in Terminal 4 that is not controlled by Spirit. [Tr. 228, 450].

For these reasons, all appropriate inferences may and should be drawn in favor of Alexandre and against Respondent's defenses in this case.

B. Respondent is Not a Derivative Carrier within the Meaning of the RLA, and Respondent is an Employer Within the Meaning of Section 2(2) of the Act.

i. Respondent Does Not Meet the NMB's Standard for a Derivative Carrier

While the NLRB has historically had a general policy of referring questions regarding RLA jurisdiction to the NMB, "there is no statutory requirement" that the jurisdiction question be submitted for an NMB advisory opinion prior to a Board ruling. The Board retains jurisdiction in cases where RLA jurisdiction is clearly lacking, and has not referred to the NMB cases with similar factual situations to those where the NMB has previously declined jurisdiction. *E.W. Wiggins Airways*, 210 NLRB 996 (1974); *Air California*, 170 NLRB 18 (1968). The Board follows NMB precedent to decide the jurisdictional question if it is raised by the employer, but the Board determines that it is not necessary to refer the issue to the NMB for an advisory opinion.

The NMB has established a two-part test to determine whether an employer that is not itself a "carrier" within the meaning of the RLA is sufficiently controlled by a carrier to be subject to its jurisdiction, commonly referred to as a "derivative carrier." *Swissport USA, Inc.*, 35 NMB 190, 194-195 (2008); *Air Serv Corp.*, 33 NMB 272, 285 (2006). The NMB test

requires two affirmative findings: (1) that "the nature of the work is that traditionally performed by employees of rail or air carriers," and (2) that "the employer is directly or indirectly owned or controlled by, or under common control with a carrier or carriers." *Signature Flight Support of Nevada*, 30 NMB 392, 399 (2003). In turn, to determine whether the employer is sufficiently under the control of the rail or air carrier, the NMB considers the following six factors:

> (1) the extent of the carrier's control over the manner in which the company [an alleged derivative carrier] conducts its business; (2) the carrier's access to the company's operations and records; (3) the carrier's role in the company's personnel decisions; (4) the degree of carrier supervision of the company's employees; (5) whether company employees are held out to the public as carrier employees; and (6) the extent of the carrier's control over employee training.

Air Serv Corp, 33 NMB at 285. This fact-intensive inquiry is performed on a location by location and contract by contract basis, "because contracts and local practices might vary in a determinative manner for different employee groups, different operations, and in different locations." *Air Serv Corp.*, 39 NMB 450, 455-456 (2012).[7] Although none of the above six factors are dispositive, the Board has previously noted an NMB trend towards emphasizing the third factor, seeking evidence of "meaningful control" over major personnel decisions such as hiring, discharge, and discipline. *Allied Aviation Service Co. of New Jersey*, 362 NLRB No. 173

[7] Thus, the NMB has, when circumstances warrant, declined to exercise jurisdiction over an employer who performs services under a different contract at another location than one where it previously found sufficient carrier control to extend jurisdiction to the contractor. See, e.g., *Air Serv Corp.*, 39 NMB 450 (2012) (declining to exert jurisdiction regarding Air Serv operations at LaGuardia Airport, having previously found sufficient carrier control in Air Serv operations at San Francisco International Airport, *Air Serv Corp.*, 33 NMB 272 (2006), and at John F. Kennedy International Airport, *Air Serv Corp.*, 38 NMB 113 (2011)); *Menzies Aviation, Inc.*, 42 NMB 1, 6 (2014) (declining to exert jurisdiction regarding Menzies Aviation operations at Seattle-Tacoma International Airport, having previously found sufficient carrier control in Menzies Aviation operations at Los Angeles International Airport, *John Menzies*, 30 NMB 463 (2003)). Neither the NLRB, nor the NMB has ever decided a case involving jurisdiction over Respondent, although the NLRB has ruled in the General Counsel's favor, without passing on the question of jurisdiction, on two of Respondent's petitions to revoke investigative subpoenas *duces tecum*, including one issued in the course of the investigation of the instant case.
But, c.f. *Signature Flight Support/Aircraft Service Int'l, Inc.*, 32 NMB 30 (2004), where the NMB analyzed operations of Aircraft Service Int'l., Inc. at LaGuardia Airport with respect to carrier ATA, the employer's primary customer at LaGuargdia, even though the employer had lost its contract with ATA, precipitating the layoff of all but two bargaining unit employees. The layoff was the subject of the unfair labor practice case the NLRB was considering when it referred the jurisdictional question to the NMB.

(2015), enfd. 854 F.3d 55 (2017), citing *Airway Cleaners, LLC*, 41 NMB 262, 268 (2014), *Menzies Aviation, Inc.*, 42 NMB 1, 7 (2014), and *Bags, Inc.*, 40 NMB 165, 170 (2013). In sum, it is "the degree of influence that a carrier has over discharge, discipline, wages, working conditions, and operations," that must be shown before derivative carrier status may be found. *ABM Onsite Services-West, Inc. v. NLRB*, 849 F.3d 1137 (2017), citing *Air Serv Corp.*, 33 NMB at 285.

In *Signature Flight Support*, 32 NMB 214 (2005), the NMB examined the operations of Signature Flight Support (Signature) at Westchester County Airport, a facility in White Plains, New York, serving mostly corporate-owned, privately-owned, and fractionally-owned aircraft. At the time, approximately 60% of Signature's White Plains business was with a company called NetJets, 20% with a company called TAG Aviation, and the remaining 20% apparently was directly with other private owner-operators. *Id.* at 217. The NMB determined that record evidence was sufficient to establish that NetJets was a carrier within the meaning of the RLA, and proceeded to analyze the extent of control which NetJets exerted over Signature's operations and employees in White Plains.[8] Ultimately, the NMB determined that Signature was not a derivative carrier.

The NMB balanced all of the factors and determined that NetJets did not exert sufficient control over Signature. The NMB noted Signature's maintenance of its own employee manual, safety manual, and customer service manual, as well as the fact that employees wore uniforms and identification cards bearing only Signature's name. Signature's employees received their on-the-job training exclusively from other Signature employees. The NMB acknowledged that although Signature employees' schedules were, broadly speaking, dictated by NetJets' flight

[8] The NMB did not pass on whether TAG Aviation was also a carrier, finding insufficient evidence on the question in the record.

schedule, Signature managers retained the final decision over how many employees to schedule at which times, and had sole discretion over whether to authorize overtime. The NMB determined that this was not indicative of substantial control, despite the fact that Signature received several logistics reports each day with updates to NetJets' schedule and flight-specific duty information. Moreover, a NetJets coordinator gave daily reports to Signature's operations manager regarding the day's needs, schedule changes, and Signature's performance. The NetJets coordinator also met at least weekly with Signature's on-site general manager to discuss staffing levels, the professionalism of Signature's employees, and the availability of necessary equipment, furnished by Signature. NetJets performed a maximum of two formal performance audits each year, and the NetJets coordinator would also report Signature performance problems to NetJets' corporate headquarters.

Furthermore, the NMB considered evidence that Signature employees sometimes received orders directly from NetJets employees, such as requests to help with baggage or obtaining food and drink, received instructions several times per day from Signature supervisors specific to the needs of particular flights communicated from NetJets via logistics report updates, and at least one NetJets flight crew member was present at all times when Signature mechanics fueled aircraft or performed oil maintenance, even though Signature owned the equipment. Signature had also responded to NetJets' concerns about particular employees by transferring them. Nonetheless, the NMB emphasized that the totality of the evidence demonstrated that NetJets lacked the requisite substantial control over Signature's employees. Signature alone hired, trained, promoted, paid, transferred, evaluated, rewarded, and disciplined its workforce, even though it sometimes received feedback from NetJets that influenced such decisions.

The NMB contrasted these circumstances with those of four other cases where it had found derivative carrier status, including two prior cases involving other Signature locations. In those instances, the NMB found several factors taken together, impacting both the employer's operations and their employees, demonstrated substantial control by the carrier. For example, in *Signature Flight Support of Nevada*, 30 NMB 392, 400-401 (2003), the carriers not only required Signature's employees in Las Vegas, Nevada to follow their operating and training programs, the carriers also directed and supervised Signature employees, effectively recommending discipline when reporting personnel problems and participating in investigations of disciplinary incidents. The carriers also had more extensive access to Signature's records in Las Vegas than NetJets did in White Plains; the carriers were able to access employees' background check files and training files. Signature also leased space from one of the carriers, something it did not do in White Plains. Finally, the NMB also noted that Las Vegas Signature employees were rewarded by the carriers with passes for free flights.

Likewise, in *Kannon Serv. Enterprises Corp.*, 31 NMB 409, 416-418 (2004), the NMB examined the relationship of Kannon and Delta at FLL. At that time, Kannon performed Delta's skycap and wheelchair assistance services, and had no other clients at FLL. The NMB found it compelling that Delta not only dictated to Kannon how many employees would work each shift and at which locations throughout the airport, but also the maximum number of hours which any individual employee could work per month, an item specified in the service contract. Kannon merely retained discretion as to which employees would fill the Delta-scheduled shifts. Delta managers met with Kannon's front-line supervisors at least twice per week, and with Kannon's general manager daily to discuss employee performance. Delta also established the training that Kannon employees received upon hire from Delta employees, and required annual recertification

of that training, the records of which were required by contract to be maintained by Kannon. Delta furnished Kannon with its office space and the equipment used by the skycaps and wheelchair assistants.

In this case, it is appropriate to examine Respondent's operations at FLL under its contract with Spirit Airlines, as the NMB test makes clear that employers are derivative of the particular carrier for which they provide contract services.[9] Alexandre's work, particularly at the end of her employment with Respondent, was almost completely, if not entirely, cleaning RON Spirit aircraft. This operation presents markedly similar circumstances to cases above where the NMB has declined jurisdiction, and, by the same token, bears little resemblance to the facts in cases where NMB has found substantial carrier control. For the reasons set forth in detail below, Respondent is not a derivative carrier of Spirit under the RLA and, accordingly, is not exempt from Board jurisdiction. Even if the entirety of Respondent's FLL operation is examined, the airlines collectively do not exert substantial control over Respondent's operations and employees. Accordingly, the ALJ should find that Respondent is an employer within the meaning of Section 2(2) of the NLRA.

ii. Extent of Spirit's control over Respondent's operations and personnel decisions

Spirit contracts with Respondent to perform its airplane cleaning services at FLL, with the relationship specified as "vendor/vendee" in the service agreement. No other services are performed by Respondent for Spirit at that airport, and Spirit does not prevent Respondent from performing similar services for its competitors. Spirit compensates Respondent on a per unit

[9] At some airports, several airlines have formed baggage "consortiums" to manage contracting with companies specializing in baggage handling services. In those cases, the NMB/NLRB have treated the consortium as a single carrier entity. At FLL, Respondent maintains individual contracts with several airlines, although American has opted to form a consortium with a few smaller airlines to pay Respondent for its checkpoint services. [Tr. 495].

basis, i.e. each aircraft "turn" cleaning and each aircraft RON cleaning, rather than a man-hour basis. All overtime is solely Respondent's responsibility, unless it falls under the contractual "out of scope" provision, and only Respondent's supervisors decide whether to keep a particular employee on the clock to satisfy operational needs. No record evidence was introduced showing whether or how often overtime work occurs under the Spirit contract.

Unlike *Swissport*, *Air Serv Corp*., *Kannon*, and other cases where the NMB opined that it would assert jurisdiction, Spirit's contract with Respondent does not mandate a requisite number of staff or supervisors, only that "a competent work Supervisor (or other employee with responsibility for overseeing the performance of the services), [be] located in the general area of the Carrier's facilities at which the services are to be performed." In fact, Respondent has one dedicated Spirit Operations Manager and five Spirit Shift Supervisors, meaning there is often more than one employee of Respondent with employee oversight responsibilities in Terminal 4.

Likewise, Respondent determines the number of employees needed to clean Spirit aircraft in the time allotted by Spirit – eight to ten minutes each for the approximately 58 turns each day, and between 10:30 p.m. and 6:30 a.m. for the three to five RON planes each night. Respondent decides which employees to schedule, how many days and hours each will work per week, and whether or not to schedule any overtime, without any input from or consultation with Spirit. Although Spirit delivers its flight schedule to Respondent once per month, little changes from month to month, permitting an inference that any changes in scheduled staffing levels that may occur are at the sole discretion of Respondent, determining how best to fulfill its contract obligations. Moreover, Respondent failed to present any evidence of actual instances of employees' work hours being impacted by either schedule changes or unexpected Spirit service changes, such as weather delays. An inference may therefore be drawn that the impact of

unexpected changes to employees work hours as the result of service changes, if it occurs at all, is limited and sporadic in nature.

In contrast to cases where the NMB has found jurisdiction based on derivative carrier status, Respondent's Terminal 4 break room, used exclusively by Respondent's employees, is leased directly from BCAD, not through Spirit. Respondent and Spirit share responsibility for providing supplies and equipment necessary for the cabin cleaners to perform their duties, which are stored in the break room's closet. Respondent provides the vacuum, "hokys," gloves, and garbage bags; Spirit provides the cleaning solutions and associated implements.

Spirit maintains wholly separate offices from Respondent on both the ramp level and upper level of Terminal 4. Only two of Respondent's employees, the dispatchers, perform their regular work within the Spirit-controlled operations center on the ramp level. The dispatcher's primary job duty is to relay real-time information about Spirit's arrivals from the flight tracking system to Respondent's supervisors and cabin cleaning crews. Therefore, no Spirit managers or supervisors direct particular employees of Respondent that an aircraft is at a gate and waiting to be cleaned; instead, the dispatcher relays that notification and Respondent's supervisors ensure that the work is completed in a timely manner.

Rose and Kendrick meet about once per month to discuss Respondent's overall performance. In early 2017, Spirit manager Rose alerted Respondent manager Kendrick to service issues occurring during P.M. turn cleanings. In particular, Rose recalled that he emailed Kendrick to inform her that aircraft were not being cleaned on time, causing delays, and cited specific examples of the timing of Respondent's employees' arrival and departure from the aircraft. The service issue was traced back to Respondent's dispatcher in the Spirit operations center. Kendrick offered the employee a transfer to another carrier's service contract, but she

refused, and Kendrick subsequently discharged her. Spirit manager Rose testified that he had no knowledge of what happened to the employee after he alerted Kendrick to the delays, and that he did not ask that she be removed or that any specific action be taken with regard to her employment.

In the previous cases where the NMB has assigned significant weight to the ability of the carrier to request that an individual not be used on their account, it has come under the umbrella of "personnel decisions" when the request is an effective recommendation for termination because the employer does not have other accounts at that airport to which it can transfer the employee in question. In this case, Rose did not even request the removal of the P.M. dispatcher; Rose reported to Kendrick several instances where Spirit flights were delayed due to the late arrival of Respondent's cleaning crew to the turning aircraft. Therefore, it was Respondent's independent decision that the remedy for the situation was removal of that individual from the dispatcher position.

Aside from this incident, the record is devoid of any evidence showing that Spirit has any role in Respondent's decisions to hire, discharge, discipline, suspend, promote, transfer, or reward employees, even on the macro level – Respondent determines its own staffing levels necessary to satisfy the scope of work. No one from Spirit is present during Respondent's interviews of job candidates. Spirit has never requested that a particular action be taken against an individual employee of Respondent, nor that discipline be issued to Respondent's employees. Moreover, the record evidence shows that Respondent conducts its own investigations and makes its own decisions when employee incidents are reported by carrier clients, prior to any action being taken, and, as noted above, only Respondent's supervisors are responsible for creating and promulgating employees' work schedules. [RX 2; GCX 8; JS 20]. Spirit's contract

with Respondent specifies that Respondent "will make all decisions as to the supervision of their respective [sic] employees engaged in performing the services pursuant to [the] Agreement." The document further specifies that "nothing contained herein… shall be construed to create an employer-employee partnership or joint venture relationship" between Spirit and Respondent. Therefore, Spirit's involvement in Respondent's operations and personnel decisions is far too minimal to be indicative of "substantial control," and these factors cut against a finding of derivative carrier status according to the NMB test.

f. Spirit's access to Respondent's operations and records

The service agreement between Spirit and Respondent requires Respondent to:

> [A]t all times keep complete and accurate books, records and documents from which may be determined the basis for billing, compliance with all applicable statutes, regulations, orders, ordinances and security programs, and for compliance with this agreement. [Respondent will maintain these records for at least three years. Such documents] will be open for inspection, examination, audit and copying by [Spirit] at all reasonable times during the term of this agreement and for three (3) years thereafter.

[JX 15]. In *Signature* White Plains, the NMB drew a distinction between the White Plains operation, where NetJets had the right to audit only documents related to billing, and Signature's Las Vegas operation, where carriers had more complete access to records, including to employees' background check files. The latter indicated substantial control; the former, similar to those records of contract compliance and documents to support Respondent's invoices, did not merit a finding of derivative carrier status. Without record evidence showing that Spirit has access to substantially all records related to Respondent's business at FLL, this factor cuts against a finding of substantial control.

g. Degree of supervision of Respondent's employees exercised by Spirit

Alexandre testified that when she performed overnight cleaning duties on Spirit aircraft, the only supervisors present were Respondent's supervisors, Wilner Baptiste and Hubert Headlam. Occasionally, supervisor Marrast, who primarily worked on Respondent's Delta account at Terminal 2, would come to Terminal 4, where Baptiste's crew was working, to pick up or deliver reports. Sometimes mechanics, not employed by Respondent, would also work on the Spirit aircraft at the same time Alexandre and the rest of the crew were cleaning. Unequivocally, however, no Spirit supervisors oversaw Respondent's employees' work as they performed it.

This account was corroborated entirely by Spirit manager Rose, who stated that the only evaluation of the RON team's work occurs on about a weekly basis, when a Spirit Ramp Supervisor performs an audit of the plane's cleanliness first thing in the morning via the electronic "Q-Pulse" system, which automatically submits the results of the audit directly to Spirit's Cabin Appearance team, at Spirit's corporate headquarters. Rose also attempts to have Spirit supervisors perform one audit of a turn cleaning per week. Kendrick testified that she does not receive results of turn audits – and seemed unaware that they occur at all – indicating that while the audits help Spirit give Respondent feedback about its overall performance of the contract services, Spirit is not exerting substantial control over Respondent by performing them. Furthermore, none of the audit results are directly traceable to the performance of any particular employee of Respondent, and there is no evidence in the record that audit results were ever used to support any personnel decisions of Respondent. In sum, this factor cuts strongly against a finding of substantial control.

h. Spirit's control over training of Respondent's employees

The service agreement between Spirit and Respondent does not address training beyond requiring Respondent to cover all costs of training mandated by BCAD, USDA, and other governmental entities for its employees. Respondent's supervisors provide on-the-job training to Respondent's employees. Alexandre testified that she and others were instructed how to clean the airplane floors, seats, and galleys during their group interview, and again on their first day of work. It was not until sometime long after Alexandre started working that Spirit's computerized training was conducted. Alexandre's recollection was that the computer module was very brief, with a five to ten question test at the end. No supervisors were present; Respondent supervisor Baptiste was the one who told Alexandre and her coworkers that they had to complete the training. The training, which was made by Spirit and Spirit-branded, took place in a computer room located near a passenger waiting area in Terminal 4 at FLL. The record is not clear who manages the computer room; Spirit's Ramp and Operations Manager, Rose, testified that it did not belong to Spirit; Respondent's Manager Kendrick and Alexandre testified that it was not maintained by Respondent.[10] Respondent did not present any documents demonstrating that completion of the computer module is tracked in any way or that employees are required to repeat it periodically, as they are with certain Delta training modules if they work on the Delta account. On balance, this factor tends to demonstrate that Spirit does exert some control over Respondent, but not substantially so.

[10] It is possible that this room is operated by BCAD for the common use of airport employees.

i. Whether the employees in question are held out to the public as Spirit employees

Alexandre testified that while performing her RON cleaning duties, she wore the same uniform that other non-supervisory employees of Respondent wear: navy pants, a blue shirt with Respondent's logo on it, and, while outside on the ramp area, a yellow vest, also with Respondent's logo on it. Supervisors wear similarly Respondent-branded uniforms in a different color palette, to signify their supervisory status. Cabin cleaners working on Spirit aircraft do not wear any Spirit insignia. Furthermore, all of Respondent's employees' security credentials issued by BCAD show "ASMO" (American Sales and Management Organization) as their employer; nothing on the badge indicates for which airline(s) the employee performs services. In all, the record shows that none of Respondent's employees were held out to the public as Spirit employees, and this factor also cuts against a finding of substantial control.

j. Respondent is not a derivative carrier of Spirit

As set forth above, the facts specific to this case stand in stark contrast to other cases where the NMB has opined that it would assert jurisdiction on a derivative carrier basis. Examining the totality of the six factors enumerated in the NMB's "substantial control" analysis, it is clear that Respondent's operation pursuant to its service contract with Spirit at FLL is not substantially controlled by the common carrier.

Respondent has failed to carry its burden of proving that it would be considered a derivative carrier by the NMB and, concomitantly, has failed to carry its burden of proving that it is exempt from the NLRB's jurisdiction and is not an "employer" within the meaning of Section 2(2) of the Act. Respondent's work for Spirit is that of an arm's length contractor, such that Respondent retains significant discretion and control over personnel decisions, staffing levels, employee appearance, and supervision of its workforce. Spirit exerts control only with respect to

the training module Respondent's employees working on Spirit aircraft are required to complete, and by mandating the cleaning supplies to be used on its aircraft. These elements are insufficient to demonstrate the "substantial" control required by the NMB for derivative carrier status. Accordingly, Respondent's arguments on this point should be rejected, and it should be found to be an "employer" under the Act.

iii. Alexandre's limited, sporadic work on Delta aircraft does not warrant an inquiry into whether Respondent is a derivative carrier of Delta.

Delta's contracts and training requirements for Respondent are the most stringent of all the carriers at FLL. However, as demonstrated by the testimony of Rose and Defrancesco, the contracts between Respondent and the airlines do not reflect the full reality of Respondent's operation. Furthermore, while it is possible that, if Alexandre worked primarily on the Delta account, Respondent would prevail in arguing that it is a derivative carrier of Delta, that argument is inapplicable, where, as here, Alexandre's work on Delta flights was sporadic and ad hoc at most, and ended after Respondent chose to hire more employees to service the Delta account. [Tr. 257].[11] Instead, Respondent employed Alexandre almost exclusively in service of Spirit, particularly towards the end of her employment, and it is therefore appropriate to limit the inquiry of the NMB derivative carrier control factors to Respondent's relationship to Spirit alone.

iv. Respondent is Not a Derivative Carrier of the Airlines at FLL Collectively

By the same token, the NMB analysis here should not account for the sum of Respondent's operation at FLL. However, even if Respondent's relationships with all airlines

[11] Alexandre was not included in the list of authorized employees sent by Delta to Respondent on April 15, 2016, prior to her discharge on April 28, 2016. [RX 6, pages 28-32]. Therefore, it is reasonable to infer that either Alexandre had not performed work on Delta aircraft for some time; Respondent had requested that Delta deactivate her (see, e.g., RX 6, page 1, where Kendrick requested that employee Maudelyne Louise be reactivated as she was returning to Delta cabin service), possibly because it had already planned to terminate her employment; or Respondent permitted employees to perform work on Delta aircraft without following Delta's training protocols, indicating that Delta does not exert as much actual control over Respondent as Respondent now argues.

are examined on a collective basis, Respondent cannot be reasonably found to be a "derivative carrier" of all airlines, because the totality of the circumstances demonstrates that Respondent is an entity in control of its own business decisions. Respondent operates with some constraints imposed by its clients, but retains control over the methods by which it navigates those constraints, and is therefore not controlled by the airlines within the meaning of the NMB test.

As described in greater detail above, each airline exerts influence on certain aspects of Respondent's operation. For example, Delta exerts a high degree of control over Respondent's training of its employees, though Delta's requirement only apply to the approximately 27% of Respondent's overall FLL workforce assigned to the Delta account. Respondent retains control over which employees will be assigned to that account or "cross-trained" to be available to perform work on multiple accounts.

Similarly, although West Jet requires that Respondent's employees serving in passenger assistance roles (i.e. ticket counter and gate agents) wear West Jet uniforms and name tags, but this is a very small portion of Respondent's business, and there are only four West Jet flights in and out of FLL (two turns) each day. The vast majority of Respondent's employees wear uniforms issued by Respondent, bearing Respondent's name and logo.

Respondent's business is winning bids for performing services to the airlines. The business is not a staffing agency model, wherein Respondent bids to provide a specific number of employees. Rather, Respondent alone determines the number of employees and work-hours required to perform the services for which the airlines have awarded it contracts. Respondent alone determines the best way to "shuffle" employees' schedules in order to accomplish all of the required work to be completed; Respondent alone determines who its employees will be and interviews without input from the airlines. Although the record shows limited evidence of

Respondent receiving feedback from the airlines about specific employees, the record is clear that the airlines sought no specific action when reporting mundane incidents with Respondent's employees. Moreover, when West Jet informed Respondent that three employees, including two supervisors, were engaged in a theft scheme, Respondent made the decision to discharging the employees. No evidence was presented showing that West Jet did anything further than seek removal of the employees from their account.

Furthermore, because Respondent has so many different accounts at FLL, a request to have an employee removed from a particular account is not an effective recommendation to discharge the employee, as has been found in other cases. See, e.g., *ABM Onsite Services – West, Inc. v. NLRB*, 849 F.3d 1137, 1145 (2017), quoting *Menzies Aviation*, 42 NMB 1, 6 (2014) ("explaining that 'the authority to remove employees' from a contract is relevant only when 'an employee has been terminated following a carrier request that he or she be removed from the contract," as when there is no evidence of an attempt to transfer the employee to another account). Instead, employee Vazquez was transferred from Respondent's Bahamas account to its American account; employee Ambeau declined a transfer from the Spirit dispatcher position to cabin cleaning. It is worth noting that Ambeau was not being removed from the Spirit contract altogether, as well as that Respondent recorded the circumstances as Ambeau voluntarily quitting her employment for declining the transfer, rather than her being discharged.

For these reasons, and in consideration of the facts described in full above, Respondent's total operation at FLL does not meet the threshold of control required by the NMB's derivative carrier test. Just as Respondent is not a derivative carrier of Spirit, Respondent is not a derivative carrier of all of its airline clients at FLL – even if such an analysis is appropriate in

this case at all. Respondent is an employer within the meaning of Section 2(2) of the Act, and is not entitled to an exemption as a derivative carrier.

C. Respondent Violated the Act by Discharging Alexandre

In order to establish unlawful discrimination under Section 8(a)(3) and (1) of the National Labor Relations Act, the General Counsel must demonstrate by a preponderance of the evidence that the employee was engaged in protected activity, that the employer had knowledge of that activity, and that the employer's hostility to that activity "contributed to" its decision to take an adverse action against the employee. *Director, Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994), *clarifying NLRB v. Transportation Management*, 462 U.S. 393, 395, 403 n.7 (1983); *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).[12]

Evidence that may establish a discriminatory motive – i.e., that the employer's hostility to protected activity "contributed to" its decision to take adverse action against the employee – includes: (1) statements of animus directed to the employee or about the employee's union or other protected activities (*see, e.g., Austal USA, LLC*, 356 NLRB No. 65, slip op. at 1 (2010); (2) statements by the employer that are specific as to the consequences of union or protected activities and are consistent with the actions taken against the employee; (3) close timing between discovery of the employee's union or protected activities and the discipline (*see, e.g.*,

[12] The *Wright Line* standard upheld in *Transportation Management* and clarified in *Greenwich Colleries* proceeds in a different manner than the "prima facie case" standard utilized in other statutory contexts. See *Reeves v. Sanderson Plumbing Products, Inc*., 530 U.S. 133, 142-143 (2000) (applying Title VII framework to ADEA case). In those other contexts, "prima facie case" refers to the initial burden of production (not persuasion) within a framework of shifting evidentiary burdens. In the NLRA context, by contrast, the General Counsel proves a violation at the outset by making a persuasive showing that the employer's hostility toward protected activities was a motivating factor in the employee's discipline. At that point, the burden of persuasion shifts to the employer to prove its affirmative defense. Because *Wright Line* allocates the burden of proving a violation and proving a defense in this distinct manner, references to the General Counsel's "prima facie case" or "initial burden" are not quite accurate, and can lead to confusion, as General Counsel's proof of a violation is complete at the point where the General Counsel establishes by a preponderance of the evidence that employer's hostility toward protected activities was a motivating factor in the discipline.

Traction Wholesale Center Co., Inc. v. NLRB, 216 F.3d 92, 99 (D.C. Cir. 2000); (4) the existence of other unfair labor practices that demonstrate that the employer's animus has led to unlawful actions (*see, e.g.*, *Mid-Mountain Foods*, 332 NLRB 251, 251 n.2, passim (2000), *enfd. mem*. 11 Fed. Appx. 372 (4th Cir. 2001); or (5) evidence that the employer's asserted reason for the employee's discipline was pretextual, e.g., disparate treatment of the employee, shifting explanations provided for the adverse action, failure to investigate whether the employee engaged in the alleged misconduct, or providing a non-discriminatory explanation that defies logic or is clearly baseless (*see, e.g.*, *Lucky Cab Company*, 360 NLRB No. 43 (2014); *ManorCare Health Services – Easton,* 356 NLRB No. 39, slip op. at 3 (2010); *Greco & Haines, Inc.,* 306 NLRB 634, 634 (1992); *Wright Line,* 251 NLRB at 1088, n.12, citing *Shattuck Denn Mining Co. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Cincinnati Truck Center*, 315 NLRB 554, 556-557 (1994), *enfd. sub nom. NLRB v. Transmart, Inc.*, 117 F.3d 1421 (6th Cir. 1997)).

Once the General Counsel has established that the employee's protected activity was a motivating factor in the employer's decision, the employer may defeat a finding of a violation by establishing, as an affirmative defense, that it would have taken the same adverse action even in the absence of the protected activity. *See NLRB v. Transportation Management*, 462 U.S. at 401 ("the Board's construction of the statute permits an employer to avoid being adjudged a violator by showing what his actions would have been regardless of his forbidden motivation"). The employer has the burden of establishing that affirmative defense. *Id*.

The General Counsel has established a prima facie case here. It is undisputed that Alexandre participated in the strike by not reporting for work at 10:30 p.m. on March 30, 2016. Instead, she reported to a hotel where the Union was hosting employees for the night, and, early the next morning, at about the time she would have been getting off work, participated in a strike

line witnessed by the departing supervisors who had performed the overnight cleaning duties Alexandre and her fellow strikers had not. Respondent therefore had actual knowledge that Alexandre was engaged in union and protected, concerted activities.

On April 5, 2016, less than a week after the strike, Alexandre commenced the process to renew her credential by filling out her application in Respondent's main office in Terminal 2. Respondent, via Kendrick and Mendez, received notification on April 11, 2016, that Alexandre's renewal was approved. A printout of the notification email they were sent was necessary for Alexandre to prove to BCAD that her badge was sponsored by her employer, a critical matter of security for the airport.[13] Yet Alexandre and her immediate supervisor, Baptiste, were not notified that the approval email was ready to be picked up at Respondent's Terminal 2 office until April 27 or April 28, 2016. It is apparent that the disconnect lay with Respondent's managers, Kendrick, Mendez, and Marrast, who refused to notify Alexandre or Baptise that the email was ready to pick up, as had happened in the past. Respondent acted consciously in deciding to engineer these circumstances to mask its animus, as evidenced by this lie recorded on Alexandre's Termination Form, that it made "all possible attempts" to communicate this information to Alexandre.

At the hearing, Respondent attempted to blame Alexandre for failing to pick up the approval email. Alexandre, who worked the overnight shift in Terminal 4, did not routinely enter the office in Terminal 2. Her shift did not overlap with Mendez's regular business hours, and to the best of her knowledge, Mendez was the individual solely in control of the necessary print-out and Alexandre could not take the test at the BCAD office without it. Previously,

[13] The BCAD Director of Security who testified at the hearing, Frank Capello, testified that although it is technically true that an employee authorized to receive a security clearance badge could come to the BCAD without the email in hand, because they see over 300 individuals per day on average, BCAD does not advertise this fact; the email itself tells employees that they are required to bring the printed email with them. [Tr. 404, 407; JX 23].

Alexandre had received a call from Mendez whenever she was needed in the Eulen office for any reason – including to pick up the authorization email during her two prior badge credentialing processes, in October 2014 at the start of her employment, and in April 2015 when her first renewal occurred. Alexandre was aware that sometimes, supervisors would bring the approval emails to each satellite office in order to give them to employees, so she asked her supervisor, Baptiste, whether it was ready, each and every day that she worked in advance of the approaching expiration date. In fact, Baptiste instructed her not to come in on the last day her badge was active, because it would expire at midnight, in the middle of her shift, and she would be unable to leave the airport's secure area according to protocol. Both Alexandre and Baptiste assumed that Alexandre would simply return to work once she had her badge renewed.

On April 28, 2015, Alexandre picked up the email from Mendez outside Respondent's Terminal 2 office as soon as she was notified by Baptiste that it was available – and attempted to use it at the BCAD office to obtain her renewed credential. However, she was told that since her badge had expired, she would have to fill out a new badge application. Alexandre returned immediately to Terminal 2 and called Mendez to tell her she was back and needed to fill out a new application, then waited for about two hours before Mendez finally told her that Respondent could do nothing for her, ending her employment. Alexandre's actions denote an individual very committed to retaining her job, rather than, as Respondent contends, an individual who failed in her "personal responsibility" to ensure her credential was renewed on time.

Furthermore, Alexandre is not the only employee of Respondent to ever have had their BCAD credential lapse, although she is the only one at FLL to have been involuntarily discharged for no other reason, according to the record evidence. Alexandre was aware of three other individuals, including supervisor Marrast, who missed several days of scheduled shifts due

to expired credentials as they awaited issuance of a new BCAD badge. Supervisor Baptiste had told the RON cabin cleaners on Alexandre's shift that Marrast had talked about his badge expiring. As noted above, Respondent failed to present any evidence to dispute this testimony. Similarly, Respondent did not present any records that would support its assertion that "every effort" was made to give Alexandre notice that her approval email was ready, an assertion thoroughly contradicted by Baptiste's admission that he himself was not told until April 28, 2016. Therefore, all reasonable inferences may be drawn in favor of Alexandre's testimony and of finding unlawful animus motivating her discharge.

Respondent introduced at the hearing the personnel records of two employees who it contends also attended the strike on March 30, 3016, and whose badges were due to be renewed in June 2016. Respondent argued that because these employees, Allison Benjamin and Jean Cadet, received their renewed badges on time and without issue, any actions taken against Alexandre could not have been motivated by unlawful animus. In addition to being further removed in time from the strike, both Benjamin and J. Cadet did not have to renew their badges until *after* the Union filed its initial charge in this matter. It is reasonable to infer that Respondent did not interfere with the badge renewal process of strike participants Benjamin and J. Cadet in an effort to make it appear as though its discharge of Alexandre was not motivated by anti-union animus. It is also possible that Respondent, having received the charge, concluded that discharging Benjamin and J. Cadet could expose it to too much liability. In any event, the records regarding Benjamin and J. Cadet, which followed the filing of the charge in this matter, are wholly irrelevant to this proceeding.

Meanwhile, Respondent presented several personnel records showing that other employees' employment ended when their badge lapsed – voluntarily. Crucially, each of these

employees' separation forms records the reason as "voluntary" and the employee "eligible for rehire" unless there is also a record of concurrent misconduct noted, as in the case of Tevin Charles. No such misconduct by Alexandre is present anywhere in the record, yet Respondent ticked the box of "ineligible for rehire," confirming Alexandre's account of her last conversation with Mendez, when Mendez told her she could not reapply for her job. Standing in stark contrast to Alexandre, Respondent involuntarily discharged Charilus Nodieu after he failed BCAD's computerized test on three attempts, yet nonetheless marked him eligible for rehire. Respondent would rehire Nodieu if he indicated a desire to try again to obtain a BCAD credential, but refused to permit the same courtesy to Alexandre, who had done nothing wrong.

In fact, Respondent presented evidence of only two employees who, like Alexandre, were deemed ineligible for rehire following badge-related discharges. Sylvania Jeunty was deemed to have abandoned her employment when she did not return to work after her badge expired; Respondent permitted Jeunty approximately three months after her badge expired to return and complete BCAD's credentialing process again before terminating her employment. Rather than demonstrating that Respondent has a history of deeming employees ineligible for rehire if their badges expire, the full picture of Jeunty's discharge given by the separation form shows that Respondent in fact allowed employees significant amounts of time to complete the credentialing process until it saw the opportunity to rid itself of a Union supporter, Alexandre, and blame the credentialing process. Natalia Pichardo, Respondent's other alleged comparator of Alexandre, is in fact even less comparable than Jeanty; Pichardo, unlike Alexandre, actually violated a company policy when she lost her BCAD-issued badge and refused to meet with BCAD after a BCAD official found it.

This overwhelming evidence of disparate treatment, combined with the timing of Alexandre's discharge shortly after the strike, demonstrates that Respondent was motivated by anti-Union animus and purposefully withheld Alexandre's renewal paperwork from her. Respondent cannot carry its *Wright Line* burden under these circumstances, as it is clear from the treatment of her coworkers that but for her participation in the Union strike, Alexandre would not have been discharged and refused rehire merely because her security credential lapsed – indeed, the credential would not have lapsed at all, but for Respondent's retaliatory conduct in reaction to her strike participation. Alexandre's discharge therefore violates the Act in all respects alleged in paragraphs 7, 8, and 9 of the Complaint.

IV. Conclusion

In sum, the credible evidence demonstrates that Spirit and the other airlines as a whole do not exert a sufficient level of control for Respondent to be exempt from the Board's jurisdiction pursuant to the NMB's derivative carrier analysis. The credible evidence furthermore shows that Respondent's supervisors and managers discriminated against employee Joanne Alexandre when they purposefully withheld her BCAD approval email from her, causing her security badge to lapse, and then informing her that she was not permitted to reapply for her job, because she participated in a strike sponsored by the Union just a few weeks prior, and to send a message to other employees that support for the Union would not be tolerated.

For the reasons set forth herein, Counsel for the General Counsel therefore respectfully asks that the ALJ find that Respondent has violated Sections 8(a)(1) and (3) of the Act through all of its conduct described above. Counsel for the General Counsel seeks a Board Order requiring Respondent to immediately:

1. Cease and desist its illegal conduct in all respects.

2. Fully remedy Respondent's unlawful discharge of Joanne Alexandre by making her whole for all monetary losses suffered as a result of her unlawful discharge, and by offering her reinstatement to her former position.

3. Post a Notice to Employees in English, Haitian Creole, and Spanish at its all of its active job sites, as well as mail copies of the Notice to current and former employees.[14]

Counsel for the General Counsel also requests that the Administrative Law Judge order any other relief deemed just and proper to effectuate the purposes of the Act.

Dated: January 18, 2018.

Respectfully submitted,

/s/ Caroline Leonard

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[14] A proposed Notice to Employees is also attached to this brief as Attachment 1. Due to the evidence presented at the hearing that several of Respondent's employees are native Haitian Creole-speakers, not fully fluent in English, Counsel for the General Counsel respectfully asks that any Notice to Employees Ordered be issued in both languages. Furthermore, due to the concentration of native Spanish-speakers in the south Florida area and the likelihood that such individuals are employed by Respondent at FLL, Counsel for the General Counsel respectfully requests that the Notice to Employees Ordered also be issued in Spanish.

ATTACHMENT 1

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT discharge you because you exercise your right to support the Service Employees Union International, Local 32BJ, or any other labor union, by engaging in a strike, or because you engage in other protected, concerted activity.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL offer our employee Joanne Alexandre reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges which she previously enjoyed.

WE WILL pay Joanne Alexandre for the wages and other benefits she lost because we fired her.

WE WILL compensate Joanne Alexandre under the terms of the Board's Order for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed whether by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for her.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to our unlawful discharge of Joanne Alexandre, and, within 3 days thereafter, notify her in writing that this has been done and that her discharge will not be used against her in any way.

AMERICAN SALES AND MANAGEMENT ORANIZATION d/b/a EULEN AMERICA
(Employer)

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

201 E Kennedy Blvd Ste 530 **Telephone:** (813)228-2641

Tampa, FL 33602-5824 Hours of Operation: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, Counsel for the General Counsel's Brief to the Administrative Law Judge, was served on January 18, 2018, as follows:

By electronic filing:

National Labor Relations Board
Hon. Robert A. Giannasi
Chief Administrative Law Judge
Division of Judges
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